IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

Crl.MC.No. 3982 of 2006()

CMP.3267/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PERINTHALMANNA

.....

PETITIONER: CLAIMANT

E.T.PRABHAKARAN,
S/O.UNNEERI,
ELLOORTHODI VEETTIL, KADANUR AMSOM,
MANJERI.

BY ADV. SRI.DILIP MOHAN

RESPONDENTS:STATE AND COMPLAINANT

---

1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. STATION HOUSE OFFICER,
PANDIKKAD POLICE STATION.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3982 OF 2006

Dated this the 7th day of December, 2006.

ORDER

The petitioner is the complainant in a case of theft. It is his allegation that theft was committed from his shop. The miscreants had not been identified, traced or tracked so far. Police came to the scene of the crime. They found some gold ornaments belonging to the petitioner and currency notes available at the scene of the crime. The police seized those articles. The petitioner filed an application under Section 451 Cr.P.C for release of the articles. The gold ornaments were returned subject to conditions. But the currency notes which were found burnt, were not returned to the complainant. The complainant had said that he must get the currency notes back in order to enable him to apply for replacement from the Reserve Bank. The learned Magistrate felt that the burnt currency notes will not be available at the time of trial if it were released, as the very purpose was to get them replaced. Hence the petition was dismissed.

2. The learned counsel for the petitioner submits that the course adopted by the learned Magistrate is not justified.

These currency notes are not in any way relevant, particularly for the crime committed. They have only incidental relevance. Specific identification of these currency notes in the course of trial does not appear to be relevant or significant. In these circumstances, the currency notes must have been returned to the complainant, it is submitted. The complainant has suffered the misery of theft. He has now been compelled to suffer the misery of the prosecution also, points out the counsel.

3. Having considered all the relevant inputs and having taken note of the decision of the Supreme Court in **Sunderbhai Ambalal Desai v. State of Gujarat** [A.I.R (2003) S.C 638], I am satisfied that this will be an eminently fit case where the currency notes can be released to the petitioner, subject to execution of a bond for the amount without any direction to produce the same again before Court later when directed. Of course, the necessary safeguards insisted in **Sunderbhai Ambalal Desai v. State of Gujarat** will have to be followed.

4. In the result, this Crl.M.C is allowed. The impugned order in so far as it refuses release of the currency notes to the petitioner is set aside. The learned Magistrate is directed to release the currency notes to the petitioner on condition that he

executes a bond to produce such amount as and when directed subject to appropriate conditions and safeguards as indicated in **Sunderbhai Ambalal Desai v. State of Gujarat.**

R.BASANT
JUDGE

rtr/